

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TEVON MARLEY,

Plaintiff,

v.

COLUMBIA CORRECTIONAL
INSTITUTION, et al.,

Defendants.

ORDER

Case No. 16-cv-609-bbc

As directed by this court's order dated September 15, 2016, plaintiff Tevon Marley has submitted a certified trust fund account statement. Accordingly, the court must determine whether plaintiff qualifies for indigent status and, if so, calculate an initial partial payment of the \$350.00 fee for filing this case.

Even when an inmate litigant qualifies for indigent status, the litigant must pay a portion of the fee returned by the formula set forth in 28 U.S.C. § 1915(b)(1). Using information for the relevant time period from plaintiff's trust fund account statement, I calculate plaintiff's initial partial filing fee to be \$65.47. For this case to proceed, plaintiff must submit this amount on or before October 28, 2016.

Plaintiff also submitted a letter, dkt. #10, requesting to use his release accounts funds "to pay the full amount asked by the court," which I construe as a motion to use his release account funds to pay the assessed \$65.47 initial partial payment.

Pursuant to 28 U.S.C. § 1915(b)(1), prison officials are required to use a prisoner's release account to satisfy an initial partial payment if no other funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). Therefore, if sufficient funds do

not exist in plaintiff's regular account to pay his initial partial payment, he should be allowed to use his release account to pay some or all of the assessed amount of \$65.47.

ORDER

IT IS ORDERED that:

1. Plaintiff Tevon Marley's motion to use his release account funds to pay the \$65.47 initial partial filing fee is GRANTED. Plaintiff is to submit a check or money order made payable to the clerk of court in the amount of \$65.47 or advise the court in writing why plaintiff is not able to pay on or before October 28, 2016.

2. If by October 28, 2016, plaintiff fails to pay the \$65.47 initial partial filing fee or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff filing this case at a later date.

Entered this 6th day of October, 2016.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge